

CITY OF LOS ANGELES
CALIFORNIA



ANTONIO R. VILLARAIGOSA
MAYOR

BOARD OF
PUBLIC WORKS
—
COMMISSIONERS

—
CYNTHIA M. RUIZ
PRESIDENT

VALERIE LYNNE SHAW
VICE PRESIDENT

PAULA A. DANIELS
PRESIDENT PRO TEMPORE

ERNESTO CÁRDENAS

JULIE B. GUTMAN

2/19/08 BdWrkshp Item 10
Water Quality Enf. Policy
Deadline: 2/7/08 by 12 p.m.

DEPARTMENT OF
PUBLIC WORKS

BUREAU OF SANITATION

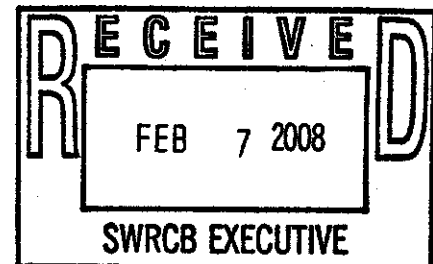
—
ENRIQUE C. ZALDIVAR
DIRECTOR

VAROUJ S. ABKIAN
ADEL H. HAGEKHALIL
ALEXANDER E. HELOU
TRACI J. MINAMIDE
ASSISTANT DIRECTORS

1149 SOUTH BROADWAY STREET, 9TH FLOOR
LOS ANGELES, CA 90015
TEL: (213) 485-2210
FAX: (213) 485-2979

February 7, 2008

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Dear Ms. Townsend:

**BUREAU OF SANITATION COMMENTS ON THE REVISED STATE WATER
RESOURCES CONTROL BOARD WATER QUALITY ENFORCEMENT POLICY**

The City of Los Angeles' Bureau of Sanitation (Bureau) supports the development of an enforcement policy that ensures the enforcement of water quality laws by the State and Regional Boards in a fair, firm, and consistent manner from region to region throughout the state.

The Bureau commends the State Water Resources Control Board's (SWRCB) efforts in developing a progressive Water Quality Enforcement Policy (WQEP); however, the Bureau believes several sections still require further clarification to provide greater definition and consistency in enforcement from region to region.

The Bureau offers the following technical comments concerning the Policy:

Classification of Violations

The Bureau agrees with the SWRCB on establishing criteria to assist the Regional Boards in identifying and classifying significant violations for establishing enforcement priorities; however, we have the following concerns regarding some of the proposed provisions.

Sewage Spills

The proposed WQEP classifies spills that pose a significant threat to water quality as Class I violations and spills that pose a moderate, indirect, or cumulative threat to water quality as Class II violations. The proposed WQEP should instead more closely mirror the SWRCB's statewide Waste Discharge Requirements (WDRs) for Sanitary Sewer Systems.



Creating a new class of violations for sewage spills is not consistent with the current Sanitary Sewer WDRs. Class I violations for sewage spills should be large sewer spills that result in a discharge of untreated wastewater to a surface water. Class II violations should include spills that create a nuisance as defined in California Water Code (CWC) Section 13050(m); that do not reach a body of water, but are over 1,000 gallons; and that discharge to a storm drainpipe, but are fully captured and returned to the sanitary sewer system. Class III violations for sewage spill should be those that pose only a moderate, indirect, or potential cumulative threat to water quality; those spills under 1,000 gallons that do not reach a surface water; and those that do not reach a body of water and are determined to be unavoidable.

Compliance Schedules

The policy assigns violations of compliance schedule dates by 30 days or more as a Class II violation. The policy should clarify that, under some circumstances, classifying these as Class II violations is not appropriate. The policy should allow the Regional Water Quality Control Board (RWQCB) discretion to take into account the good faith efforts, capital expenditure, and technical feasibility and difficulties before automatically assigning a violation of a compliance schedule date as a Class II violation.

Submittal of Reports

Enforcement priority should be given to those violations that adversely impact human health, water quality, beneficial uses, or the environment. The proposed WQEP assigns failure to submit required information as either a Class II or a Class III violation depending on whether the information is necessary to confirm past compliance.

The proposed WQEP should not classify administrative, record keeping, and reporting type violations as Class II violations. The Class III category is more appropriate although, in some circumstances, no classification is warranted. For example, a discharger may contract with outside labs that may be late in providing the discharger with the results; a discharger often resubmits data for analysis, which may cause the reporting to be considered late; or dischargers may have changes to its permit after adoption that further confuse the assessment of violations for alleged reporting infractions.

In light of the problems the state is having with the California Integrated Water Quality System (CIWQS) electronic self-monitoring program, only confirmed violations should be available to the public through CIWQS and Permit Compliance System (PCS). Reporting violations should be classified as Class III violations only if there is a complete failure to submit a report or there are chronic problems in reporting and repeated violations in order to not misrepresent dischargers that are diligent in their efforts to meet NPDES limitations and submit reports in a timely manner.

The proposed WQEP should require RWQCB to verbally notify a discharger of a potential violation to determine if an informal letter or Notice of Violation (NOV) is necessary. Most NOV letters received in the past have been in error or have been for potential violations made

several years in the past. Timeliness in delivery of NOV's is also needed. Consequently, assigning reporting violations as Class III is more appropriate.

Mandatory Minimum Penalties

Section IV. C. 10 of the proposed WQEP requires the SWRCB to assess Mandatory Minimum Penalties (MMPs) of \$3,000 for each non-serious violation. A non-serious violation is defined in section (d) as one which occurs if the discharger *exceeds a toxicity discharge limitation where the WDRs do not contain pollutant-specific effluent limitations for toxicity pollutants a fourth time in any period of six consecutive months. The six-month time period is calculated as a "rolling 180 days"*.

The Bureau believes that the WQEP should clarify that this provision does not apply where the NPDES permit requires the permittee to implement a Toxicity Identification Evaluation or a Toxicity Reduction Evaluation (TIE/TRE) and the permittee is in good faith complying with those permit requirements. TIEs and TREs are approaches to help a discharger identify possible sources of toxicity and, if found, to evaluate possible reduction in these parameters. In no way should the SWRCB penalize dischargers for exceedances of toxicity triggers requiring a TIE/TRE.

In addition, the policy states that when calculating MMPs for non-serious violations, a six-month time period should be calculated as a "rolling" 180 days. This approach subjects the permittee to multiple MMPs for exceedances and would allow a discharger to be penalized twice for the same violation. Furthermore, the policy should also clarify that when calculating MMPs for repeat violations, the violation must be of the same pollutant parameter. The Bureau believes that using a rolling 180-day approach and using a combination of any pollutant effluent violation as a trigger to MMPs for repeat violations is contrary to the concept of chronic violations and to the intent of the State Legislature when developing the MMP language.

Ability to Pay

The portion of the WQEP that allows an increase of an Administrative Civil Liability (ACL), over that otherwise calculated, should be amended to require the RWQCBs to calculate the amount of the penalty without regard to size, revenues, assets, or ability to pay. Increasing the amount of an ACL based on a municipal discharger's ability to pay will penalize large public agencies that have more exposure to potential violations. For example, a public agency such as the City of Los Angeles, with thousands of miles of sewer system, would face more instances of potential violations despite having one of the most efficient capacity, management, operation, and maintenance programs in the country.

While granting small communities unable to pay an assessed ACL a break by reducing the amount downward is commendable, increasing the amount of an ACL based on a discharger's ability to pay is contrary to the specific and statutory amounts codified in the California Water Code (Table IV-1). The Bureau believes that the penalties presently codified in the Water Code

are sufficient to deter future violations and that increased fees should be only warranted under circumstances involving the demonstrated bad faith of a discharger.

"Maximum Enforcement" does not Equate to Maximum Penalties

The Bureau is concerned that the Policy equates maximum enforcement impact to maximum monetary penalties and disagrees with the premise that a per gallon approach is appropriate for calculating penalties for permitted discharges that may exceed one of dozens of effluent limitations. For example, the statutory maximum penalty for a single effluent violation at a large wastewater treatment plant when calculated on \$10 per gallon basis could lead to unjustified large fines. The goal of enforcement should be regular and consistent compliance. An effective enforcement program would yield fewer enforcement actions and fewer penalties over time, as compliance records improve through deterrence, corrective actions and improvements. It is important to resist the temptation to focus on counting the number of enforcement actions taken and dollars of penalties assessed.

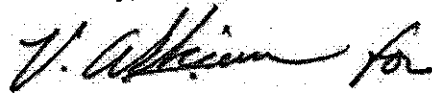
Supplemental Environmental Projects

The proposed WQEP makes significant changes to the SWRCB's allocation of funds available for Supplemental Environmental Projects (SEPs). The Bureau disagrees with the proposed provision in the Policy that would limit SEPs for other than mandatory minimum penalties to no more than 25% of the total ACL amount unless there are "exceptional circumstances." By limiting SEPs to no more than 25% and allowing an increase only under "exceptional circumstances," the SWRCB will essentially preclude the funding of beneficial environmental and public information projects at the local or regional levels.

The Bureau believes that the policy should not place a cap on the amount available for SEPs and should allow a larger amount depending on the specifics of the project and circumstances. The Legislature's most recent action in the area of SEPs was the amendment of Water Code section 13385(l) to codify the availability of SEPs in mandatory minimum penalty actions. In specifying that a portion of the penalties greater than 50% could be directed toward SEPs, the statute recognizes the validity of keeping a significant portion of the penalty revenue within the community where the dollars were generated.

The Bureau believes the comments offered above will result in a more effective and successful enforcement policy and thanks the SWRCB in advance for considering its technical comments. If you have any questions regarding the Bureau's technical comments, please contact H.R. (Omar) Moghaddam, Manager of the Regulatory Affairs Division, at (310) 648-5423.

Sincerely,

A handwritten signature in dark ink, appearing to read "E. Zaldivar" followed by a stylized flourish.

ENRIQUE C. ZALDIVAR, Director
Bureau of Sanitation

cc: Tracy Egoscue, RWQCB
Nancy Sutley, Mayor's Office
Michael Mullin, Mayor's Office
Cynthia Ruiz, President, Board of Public Works
Paula Daniels, Commissioner, Board of Public Works
Rafael Prieto, Chief Legislative Analyst Office
Traci Minamide, Bureau of Sanitation/EXEC
Varouj Abkian, Bureau of Sanitation/EXEC
Adel Hagekhalil, Bureau of Sanitation/EXEC
Masahiro Dojiri, Bureau of Sanitation/EMD
Timeyin Dafeta, Bureau of Sanitation/IWMD
Brent Lorscheider, Bureau of Sanitation/WESD
Steve Fan, Bureau of Sanitation/HTP
Doug Bohlman, Bureau of Sanitation/TIWRP
Hiddo Netto, Bureau of Sanitation/WRD
Barry Berggren, Bureau of Sanitation/WCSD
Robert Irvin, Bureau of Sanitation/ICSD
H.R. (Omar) Moghaddam, Bureau of Sanitation/RAD